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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

KOEPPEL HALL,

Defendant and Appellant.

B302462

(Los Angeles County
Super. Ct. No. BA289736)

APPEAL from an order of the Superior Court of Los Angeles County, Stephen A. Marcus, Judge. Affirmed.

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Koepfel Hall filed a petition in the superior court for resentencing under Penal Code section 1170.95 and requested the appointment of counsel.¹ The court found that defendant had failed to allege facts necessary for relief under that statute and was not eligible for relief as a matter of law because he had not been convicted of murder. The court denied the petition without appointing counsel for defendant or holding an evidentiary hearing. Defendant appealed.

Defendant's counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues on appeal and requesting that we independently review the record to determine if the lower court committed any error. Defendant filed a supplemental brief in which he argues that section 1170.95 should apply to convictions for attempted murder and that holding otherwise violates his right to equal protection. We reject these arguments and affirm the court's order.

FACTUAL AND PROCEDURAL SUMMARY

In 2007 a jury convicted defendant of nine counts of premeditated, deliberate attempted murder, shooting at a motor vehicle, shooting from a motor vehicle, and being a felon in possession of a firearm. (*People v. Hall* (Jan. 15, 2009, B199214) [nonpub. opn.] (*Hall*).)² The jury also found certain enhancement allegations true. (*Ibid.*) The court sentenced him to 60 years to life in prison. (*Ibid.*) We affirmed his convictions in an unpublished opinion filed in January 2009. (*Ibid.*)

¹ Unless otherwise specified, subsequent statutory references are to the Penal Code.

² We take judicial notice of our opinion in *Hall*, *supra*, B199214. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

On October 8, 2019, defendant filed a petition for resentencing under section 1170.95. He used a preprinted form with checkboxes, but did not mark the appropriate checkboxes for alleging that he had been charged with murder, that he had been convicted of murder or had pled guilty in lieu of going to trial at which he could have been convicted of murder, and that he could not now be convicted of first or second degree murder because of the recent changes made to sections 188 and 189.

In a declaration filed in support of the petition, defendant stated that he had been convicted of aiding “Nelson Banks of attempted [m]urder.” Defendant stated that he was driving a truck when, “to [his] surprise[,] Mr[.] Banks fired at” another vehicle. He did not intend “for this to happen.”

In another supporting document, defendant states that a complaint had been filed against him “that allowed the prosecution to proceed under a theory of attempted premeditated murder.” He further states that he was not a “major participant” in the crime “and did not act with reckless indifference to human life.”

On October 28, 2019, the trial court denied defendant’s petition. The court stated that defendant failed to check the boxes on the form of the petition that, if checked, would have constituted allegations that he “was prosecuted under a felony murder theory or a murder theory based on natural and probable consequences doctrine.” Defendant also failed to allege “that he was convicted of [first] or [second] degree murder.”

The court further stated that it reviewed defendant’s “file and has determined that he has not been convicted of [first] or [second] degree murder. [¶] Instead, [defendant] has been convicted of nine counts of premeditated, deliberate attempted murder, of shooting at a motor vehicle, of shooting from a motor vehicle and of being a felon unlawfully in possession of a firearm.”

The court concluded: “The petition is summarily denied because the petitioner is not entitled to relief as a matter of law, for the following reason[]: [¶] The petitioner was not convicted of murder.”

Defendant filed a timely notice of appeal on November 18, 2019.

Defendant’s counsel filed a brief pursuant to *Wende, supra*, 25 Cal.3d 436, sent a copy of the brief to defendant, and informed defendant that he may personally file a supplemental brief within 30 days raising any points he chooses to call to the court’s attention. Defendant subsequently filed a supplemental brief raising issues, which we address below.

DISCUSSION

Defendant argues that section 1170.95 should apply to convictions for attempted murder. Every court that has considered this issue has rejected it. (See *People v. Lopez* (2019) 38 Cal.App.5th 1087, 1105, review granted Nov. 13, 2019, S258175 (*Lopez*); *People v. Munoz* (2019) 39 Cal.App.5th 738, 754, review granted Nov. 26, 2019, S258234 (*Munoz*); *People v. Larios* (2019) 42 Cal.App.5th 956, 970, review granted Feb. 26, 2020, S259983; *People v. Medrano* (2019) 42 Cal.App.5th 1001, 1017–1018, review granted, Mar. 11, 2020, S259948.) We agree with these decisions on this point and therefore reject defendant’s argument.

Defendant further argues that applying section 1170.95 to people convicted of murder and failing to apply the statute to those, such as himself, who were convicted of attempted murder would raise “serious equal protection concerns.” We agree with the courts that have considered and rejected similar arguments. (See *Munoz, supra*, 39 Cal.App.5th at pp. 760–769; *Lopez, supra*, 38 Cal.App.5th at pp. 1110–1112; see also *People v. Cervantes* (2020) 44 Cal.App.5th 884, 888 [denying section 1170.95 procedure

to persons convicted of voluntary manslaughter does not violate equal protection].)

Lastly, defendant argues that the court erred by denying him counsel and a hearing on his petition. The right to counsel under section 1170.95, however, does not attach unless and until the petitioner makes a prima facie showing of eligibility under the statute (*People v. Lewis* (2020) 43 Cal.App.5th 1128, 1139–1140, review granted Mar. 18, 2020, S260598), and the right to a hearing requires a further prima facie showing that he is entitled to relief (*People v. Verdugo* (2020) 44 Cal.App.5th 320, 328, review granted Mar. 18, 2020, S260493). Defendant did not make either showing.

Based on our review of the record and the applicable law, we are satisfied that defendant’s counsel has fully complied with his responsibilities and that no arguable appellate issue exists. (*Wende, supra*, 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

DISPOSITION

The order denying defendant's petition for resentencing is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.